Intercarrier Compensation

INDEX TO INTERCARRIER COMPENSATION ISSUES

III. INTERCARRIER COMPENSATION

WorldCom, AT&T and Cox, collectively or individually, have raised five issues that relate to intercarrier compensation. They are:

- Issue I-5 Implementation of the Commission's April 27, 2001 *ISP Remand Order*
- Issue I-6 Jurisdictional Treatment of Virtual Foreign Exchange Traffic
- Issue III-5 Payment of Reciprocal Compensation at the Tandem Versus the End Office Switching Rate for Traffic Terminated on the CLEC Network
- Issue IV-35 Reciprocal Compensation Obligations Generally
- Issue V-8 Competitive Access Tandem Services[1]

The recurring theme present in each of these five issues is the CLECs' attempts, at every available opportunity, to ignore applicable law in order to maximize reciprocal compensation revenues and minimize access charge obligations. The CLECs do not seek contractual intercarrier compensation terms that will promote free and fair facilities-based local exchange competition. Rather, they seek terms that stand applicable law on its head, which they hope will allow them to exploit, for their own financial windfall, technical characteristics of the Verizon network.

The Commission has recently initiated a rulemaking to review the current intercarrier compensation system. *Intercarrier Compensation NPRM.* Until that rulemaking runs its course, the Petitioners' cannot use the current proceeding to evade the current system and circumvent the Commission's rules.

[1] Issue V-8 relates closely to Issue V-1, a Network Architecture issue. Verizon VA will address both in this portion of its Brief.

Issue I-5 **ISP Reciprocal Compensation**

AT&T: What are the appropriate terms and conditions to comprehensively implement the Commission's ISP Remand Order?

WorldCom: What contract terms are appropriate to implement the FCC's ISP Remand Order?

Cox: Verizon may not refuse to include in the Agreement an adequate description of the rates, terms and conditions applicable to the parties' implementation of the FCC's ISP Order.

A. OVERVIEW

The Commission's *ISP Remand Order* operates as a matter of law. It needs no implementing language in an interconnection agreement to make it effective on the parties. *See NY (AT&T/Verizon) Arbitration Order* at 43. Rather, in the absence of any specific contractual language beyond a requirement to comply with applicable law, the rights and responsibilities established by the Commission would bind ILECs and CLECs according to the terms of the Order itself.

Verizon VA stands by the foregoing analysis – i.e., the Commission's *ISP Remand Order* speaks for itself and operates as a matter of law, just as the New York Public Service Commission recently concluded in the Arbitration Order cited above. That said, Verizon VA recognizes that the Commission's Order did not (nor should it) address every possible implementation and billing detail concerning the payment of compensation for ISP-bound traffic. Accordingly, as an accommodation to the Petitioners, Verizon has demonstrated a willingness to work with them to craft reasonable contract language addressing particularly relevant implementation and billing details, provided that the Petitioners do not attempt to change what the Commission decided in its *ISP Remand Order.*

The Petitioners, however, have done exactly that. They have sought to exploit this proceeding as an opportunity to alter and avoid the Commission's rulings in the *ISP Remand*

Order. Verizon VA opposes these attempts to modify applicable law and asks the Commission to order that Verizon VA's proposed contract provisions relating to intercarrier compensation be used.

B. DISCUSSION

Initially, the Petitioners articulated this issue as involving the question of whether the CLECs were entitled to recover reciprocal compensation for terminating ISP-bound traffic originated by Verizon VA end users. After the CLECs filed their Petitions for Arbitration, however, the Commission released its *ISP Remand Order*. In that Order, the Commission: "affirm[ed] [its] conclusion in the Declaratory Ruling that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b);" determined "that inter-carrier compensation for ISP-bound traffic is within the jurisdiction of this Commission under Section 201 of the Act;" and established a new federal intercarrier compensation scheme for Internet traffic, based on declining caps on per-minute-of-use rates and annual limits on the total minutes of use eligible for compensation.

Accordingly, the Commission allowed the Parties to narrow and restate Issue I-5, but to limit it to implementation issues, if any, growing out of the *ISP Remand Order*. Per the Commission's Order, each Party filed a proposed re-statement of the issue. As explained below, in restating the issue, the CLECs proposed contract language that, in many material respects, conflicts with or exceeds the Commission's *ISP Remand Order*.

1. The CLECs Fail To Acknowledge The Commission's Finding That, Not Only ISP-Bound Traffic, But Also Other Types Of Traffic Are Not Eligible For Reciprocal Compensation Under § 251(b)(5).

In the *ISP Remand Order*, the Commission concluded that ISP-bound traffic is not subject to the reciprocal compensation requirement in § 251(b), because it is traffic that is covered by § 251(g) and, thus, "excepted from the scope of the 'telecommunications' subject to ... § 251(b)(5)." *ISP Remand Order* at ¶¶ 34, 39, 44. In doing so, the Commission expressly declined to "describe the universe of traffic that falls within subsection (b)(5)." *Id.* at ¶ 34. Rather, by reference to traffic covered by § 251(g)the Commission identified traffic excluded from the § 251(b)(5) reciprocal compensation obligations. *Id.* at ¶ 37, note 66.

In spite of the Commission's admonitions, the CLECs continue to propose either definitions of "local traffic" and "voice traffic," *see* AT&T's proposed contract §§ 1.51 and 2.1, or overly broad presumptions that all traffic exchanged with Verizon VA not in excess of the 3:1 ratio is eligible for reciprocal compensation. *See* WorldCom's proposed contract § x.4 and Cox's proposed contract § 5.7.7.3(a). The Petitioners' proposed language arguably (in the Petitioners' view) would subject toll traffic to reciprocal compensation, as opposed to the access regime, an outcome the Commission certainly cannot countenance. Verizon VA, consistent with the Commission's approach, has proposed language that excludes § 251(g) traffic from the traffic subject to the § 251(b)(5) reciprocal compensation obligations. *See* Verizon's proposed WorldCom contract § 7.3; Verizon's proposed AT&T contract § 5.7.5; and Verizon's proposed Cox contract § 5.7.2.

In two recently issued arbitration decisions, the Pennsylvania PUC and the Maryland PSC both adopted a definition of "Reciprocal Compensation Traffic" similar to that proposed by Verizon VA, rather than a CLEC-proposed definition of "Local Traffic" similar to those proposed in this case, on the grounds that Verizon's defined term more-closely tracked the Commission's directives in the *ISP Remand Order. PA (Sprint/Verizon) Arbitration Order* at 47; *MD (Sprint/Verizon) Arbitration Order* at 23-24. The FCC should reach the same conclusion.

Consistent with its methodology in the *ISP Remand Order*, the Commission should adopt Verizon VA's proposed contract language. That language identifies the traffic excluded from reciprocal compensation, rather than attempting to define the universe of § 251(b)(5) traffic.

2. WorldCom And AT&T Seek To Turn The Commission's Rebuttable 3:1 Presumption Into An Irrebuttable Presumption.

In the *ISP Remand Order*, the Commission acknowledged the difficulty in identifying ISP-bound traffic. To address this problem, the Commission adopted "a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanisms set forth in this Order." *ISP Remand Order* at ¶ 79. The Commission provided, however, that a carrier could rebut that presumption by demonstrating that traffic below the 3:1 ratio is, in fact, also ISP-bound traffic. *Id.*

Neither AT&T nor WorldCom propose contract language that would permit Verizon VA to rebut the 3:1 presumption. Tr. 1658-59, 1690. Rather, the CLECs seek to make the 3:1 presumption absolute. The Commission should reject this effort by AT&T and WorldCom to impose upon Verizon VA contract terms that fly in the face of the Commission's Order.[2]

3. AT&T § 2.2.2 Is Inconsistent With The Definition Of Reciprocal Compensation Traffic.

AT&T proposed § 2.2.2 (d) is confusing, because it states that no charges apply to "(transport and termination) of Voice and ISP Traffic . . . .except as set forth above or as expressly set forth elsewhere in this Agreement." Verizon VA does not agree that either party "terminates" Internet traffic – as the Commission has expressly held, a party receives Internet traffic and hands it off to an Internet Service Provider. *ISP Remand Order* ¶ 14 Further, Verizon

[2] Cox's proposed language preserves the notion that the 3:1 presumption can be rebutted.

VA has proposed a definition for Reciprocal Compensation Traffic under which the Parties would be eligible to receive compensation subject to the provisions of the agreement. To the extent other charges set forth in the agreement are applicable, such as access charges, such charges would not be affected by the charges applicable to Reciprocal Compensation Traffic.

4. WorldCom and AT&T Seek To Impose Upon Verizon VA Additional Prerequisites To Implementing The Commission's Interim Compensation Mechanism For ISP-Bound Traffic.

Both WorldCom and AT&T have proposed language that would require Verizon VA to satisfy three prerequisites before the Parties will begin to exchange 251(b)(5) and ISP-bound traffic in accordance with the *ISP Remand Order*. As the record makes clear, however, Verizon VA has satisfied two of the three prerequisites, such that they need not be mentioned in the contracts (or the fact that they have been satisfied should be noted in the agreement), and there is no legal support for the third.

Both AT&T and WorldCom suggest that Verizon must "request[] that ISP-bound traffic be treated at the rates specified in the *ISP Remand Order*." AT&T proposed contract § 2.2.3(a); WorldCom proposed contract § x.3(a) (collectively referred to as "Prerequisite A"). The WorldCom and the AT&T witnesses explained that they intended Prerequisite A to require Verizon to initiate the offer to exchange ISP-bound traffic in the manner prescribed by the Commission. Tr. 1661, 1678.

On May 14, 2001, Verizon issued an Industry Letter addressed to all CLECs and CMRS providers with which Verizon interconnects. (Verizon Ex. 55). In the letter, Verizon offered to establish rates for ISP-bound traffic equal to the rate caps set by the Commission in the *ISP Remand* Order, and offered to exchange all traffic subject to § 251(b)(5) at the same rates as those offered for ISP-bound traffic. Both the AT&T and WorldCom witnesses were familiar with the Industry Letter and both agreed it satisfied Prerequisite A. Tr. 1661, 1679, 1868-69.

The second prerequisite proposed by AT&T and WorldCom mimics the "mirroring obligation" set forth in ¶ 89 of the *ISP Remand Order*. Thus, AT&T and WorldCom propose that Verizon VA must "offer[] to exchange all traffic subject to the reciprocal compensation provisions of § 251(b)(5) with LECs, CLECs, and CMRS providers" at rates equal to the rate caps specified in the *ISP Remand Order*. AT&T proposed contract § 2.2.3(b); *see also* WorldCom proposed contract § x.3(b) (collectively referred to as "Prerequisite B"). In testimony, AT&T agreed that Verizon VA's Industry Letter of May 14 satisfied Prerequisite B. Tr. 1868. WorldCom, however, argued that Verizon could not "offer" to exchange § 251(b)(5) traffic at particular rates, except through a tariff filing. Tr. 1866-67.

WorldCom offers no support for its position that a tariff is required to meet Prerequisite B. Contrary to WorldCom's assertion, Verizon has, in fact, offered to exchange § 251(b)(5) traffic at rates equal to the Commission-mandated rate caps for ISP-bound traffic. It did so to all CLECs and CMRS providers via its May 14 Industry Letter. Tr. 1863-64. Indeed, certain carriers have accepted that offer. In doing so, Verizon satisfied the mirroring obligation set forth in the *ISP Remand Order* and rendered moot the proposed Prerequisite B.

The third prerequisite to implementing the Commission's interim rate structure proposed by AT&T and WorldCom is wholly without support in the *ISP Remand* Order. It states that the new rates for ISP-bound and § 251(b)(5) traffic shall not go into effect until "Verizon has paid all past due amounts owed to AT&T for the delivery of ISP-bound traffic prior to June 14, 2001." AT&T proposed contract § 2.2.3(c); *see also* WorldCom proposed contract § x.3(c) (collectively referred to as "Prerequisite C").

This ill-considered attempt to hold Verizon VA hostage over historical billing disputes is fatally flawed for at least three reasons. First, the Commission's Order provides no support for Prerequisite C. Tr. 1652, 1659-60, 1678. To the contrary, Prerequisite C ignores the Commission's announcement in the *ISP Remand Order* that, "in this Order we will implement an interim recovery scheme that . . . moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism" for ISP-bound traffic. *ISP Remand Order* at ¶ 7.

Second, AT&T and WorldCom acknowledged that the amount allegedly due them for the delivery of ISP-bound traffic is a point of dispute between them and Verizon VA. Tr. 1665, 1684-85. These disputes arise under the existing interconnection agreements between the Parties, and are not being arbitrated in this proceeding. Tr. 1665, 1685. Each of those existing agreements has a dispute resolution mechanism, and the Parties remain free to pursue any available relief thereunder. Tr. 1666, 1685. There is simply no basis for historical billing disputes to impede reaching new agreements that prospectively implement the Commission's compensation mechanism.

Third, even if the Prerequisite C language were adopted (which it certainly should not be), it would do nothing to resolve the underlying dispute between the Parties. Rather, even with this language, the Parties would have to resolve, in a separate proceeding, what, if anything, Verizon VA owed as an amount "past due." Tr. 1834-37.[3] The proposed Prerequisite C is, therefore, not necessary to implement the Commission's *ISP Remand* Order; instead, it is an illegitimate attempt to **delay** implementing it.

[3] Verizon VA maintains that it does not owe any past due amounts to AT&T or WorldCom for reciprocal compensation under their existing contracts.

In sum, to the extent they are either necessary or desirable for inclusion in the interconnection agreement, Verizon VA has satisfied the proposed Prerequisites A and B. Prerequisite C, on the other hand, is an unauthorized and useless impediment to the consummation of a new contract and the implementation of the Commission's interim compensation system. Accordingly, the Petitioners' language regarding Prerequisites A, B and C should be rejected.

5. WorldCom and AT&T Seek To Avoid The Annual Growth Caps By Proposing Language That Expands The Body Of ISP-Bound Traffic Eligible For Compensation.

In the *ISP Remand Order*, the Commission established caps on the total number of minutes of ISP-bound traffic for which a LEC may receive compensation annually. The Commission stated the first annual growth cap as follows:

> For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes **for which that LEC was entitled to compensation** under that agreement during the first quarter of 2001, plus a ten percent growth factor.

ISP Remand Order at ¶ 78 (emphasis added).

Under the guise of implementing the *ISP Remand Order*, WorldCom and AT&T have proposed language that rewrites the Commission's growth caps. They have done so by deleting the qualifying phrase "for which that LEC was entitled to compensation" when referring to ISP-bound traffic eligible for compensation. *See* WorldCom's proposed contract § x.5; AT&T's proposed contract § 2.3. Instead, they propose that all ISP-bound traffic (presumptively, all traffic over the 3:1 ratio) originating on Verizon VA's network and delivered to the ISP by the CLEC should be eligible for compensation. *Id.*

As explained above, the amount of compensation due for ISP-bound traffic in the first quarter of 2001 remains a point of dispute between Verizon VA and both AT&T and WorldCom. While the Parties have yet to resolve that dispute, the Order makes it clear that only ISP-bound traffic for which the CLECs were entitled to compensation may be counted toward the 2001 growth cap, not the "total number of minutes of use for ISP-bound traffic" as AT&T and WorldCom suggest.[4]

In a purported attempt to implement the *ISP Remand Order's* growth caps, the CLECs have rewritten the caps themselves. This presents, perhaps, the most obvious example of why the Parties should not endeavor to paraphrase the Commission's Order - particularly where, as here, the terms of the Order are clear and unequivocal. Rather, as Verizon VA has proposed, simple reliance on the terms of the *ISP Remand Order* itself would give the Parties' the simplest and least controversial prescription.

6. AT&T Proposes Improper Billing, Auditing and Blended Rate Provisions.

AT&T's proposed § 2.4 contains billing, auditing and blended rate proposals for which no basis in the Order can be found.

Section 2.4.1 requires that the parties bill each other quarterly for Reciprocal Compensation Traffic and ISP-bound traffic based on the relative percentage of the combined Reciprocal Compensation Traffic and ISP-bound traffic minutes of use during the first 2 months

[4] WorldCom and AT&T use a similar artifice to rewrite the Commission's growth cap for 2002.

Cox correctly bases the 2001 growth cap on "minutes for which the terminating Party was entitled to compensation during the first quarter of 2001, plus a ten percent growth factor." Cox proposed contract § 5.7.7.4(a). In calculating the 2002 growth cap, however, Cox incorrectly proposes that it be based upon the 2001 cap, plus ten percent. *Id.* at (b). The Commission has stated that the 2002 cap shall be equal to the "minutes for which that LEC was entitled to compensation under that agreement in 2001, plus another ten percent growth factor." *ISP Remand Order* ¶ 78. Thus, Cox's proposal fails to take into account the possibility that the number of ISP-bound minutes for which it is entitled to compensation in 2001 may be <u>less</u> than the 2001 cap itself.

of the previous calendar quarter (for purposes hereof a "Baseline Quarter"). This proposal does not provide protection for the parties against changes in relative volumes of ISP-bound traffic or Reciprocal Compensation Traffic during the third month of a Baseline Quarter. Verizon VA maintains that a true-up for billing applicable to a particular month, based on the actual balance of traffic during such month is a fair and equitable modification of AT&T's proposal to use traffic factors.

Section 2.4.3 inappropriately requires Verizon VA to provide factors to determine ISP-bound and Reciprocal Compensation Traffic. Both parties will have the same data available to determine the mix of Reciprocal Compensation Traffic and ISP-bound traffic (and any portion of the traffic that exceeds the cap). While it may be worthwhile to provide for quarterly true-up discussions between the parties to compare calculations, AT&T is in just as good a position as Verizon VA to accurately calculate the volumes that are compensable at the various rates.

Section 2.4.4 proposes the use of blended rates to bill ISP-bound and Reciprocal Compensation Traffic. Verizon VA opposes such a rate structure as being inconsistent with the express provisions of the *ISP Remand Order.* Nothing in the Order requires, or even contemplates, a blended rate structure. As Verizon VA has stated repeatedly, it will not agree to any purported "implementation" language that conflicts with the ISP Remand Order itself.

Section 2.4.5 is unnecessary and should be deleted, since the agreement already provides audit rights for each party to verify the accuracy of the other party's billing.

7. Ignoring the Contracts' General Change Of Law Sections, All Three CLECs Propose Separate and Unfair Change Of Law Provisions Unique To The *ISP Remand Order*.

In each interconnection agreement, the Parties have agreed to include a general change of law provision. In fact, for the most part, the Parties have agreed to the language in those provisions. *See* Verizon proposed Cox contract § 27 (language not in dispute); Verizon proposed AT&T contract § 27 (language not in dispute); Verizon proposed WorldCom contract Part A § 4 (some language still in dispute). As a general matter and, with certain exceptions, these change of law clauses provide that, whenever any change of law materially affects a term of the agreement, the Parties will renegotiate, in good faith, the affected provisions. If the Parties are not able to agree on mutually acceptable new or revised terms, either Party may pursue its available remedies under the agreement.

The CLECs offer no explanation as to why a future change of law regarding compensation for ISP-bound traffic should not be addressed under these general change of law clauses. Indeed, there seems to be no logical reason for having a separate change of law clause unique to one issue. A cursory review of the CLEC-proposed language, however, makes it obvious that they offer this language in the hope of taking immediate advantage of a reversal or modification, were one to occur, of the *ISP Remand Order* by the Court of Appeals for the D.C. Circuit. *See* AT&T's proposed contract § 2.5; WorldCom's proposed contract § x.6; and Cox's proposed contract § 5.7.7.1(c). The CLECs wish to be able to do so even where any such reversal or modification, by its own terms, would not mandate such a result.

This is particularly objectionable to Verizon, given the fact that Verizon has made over a billion dollars in reciprocal compensation payments to CLECs throughout its footprint since the passage of the Telecommunications Act (the vast bulk of which were for ISP-bound traffic). To date, no CLEC has refunded to Verizon any amounts associated with a retroactive application of the *ISP Remand Order* in a state where Verizon had previously made payments at the higher state reciprocal compensation rate. Put another way, the CLECs wish to receive retroactive (and immediate) payment based on any reversal or modification of the *ISP Remand Order* (even where the reversal or modification does not by its own terms require such retroactive payment), but they do not want to make Verizon whole for reciprocal compensation payments that Verizon made in the past that are inconsistent with the regime envisaged by the *ISP Remand Order.*

Not only do AT&T and WorldCom shun the general change of law clauses, they purport to predict what the future applicable law will be with regard to compensation for ISP-bound traffic. In doing so, they propose contractual language that could well be at odds with what the D.C. Circuit or another court orders, should it ever choose to modify the *ISP Remand Order.*

For example, AT&T proposes that, "At such time as the ISP Remand Order is stayed, reversed or modified, then (1) ISP-bound traffic shall be deemed Local Traffic retroactive to the effective date of this Agreement. . . ." AT&T's proposed contract § 2.5.[5]

Similarly, AT&T and WorldCom seek to give themselves the broadest of opportunities to evade the Commission's interim compensation mechanism by proposing language that causes ISP-bound traffic to be treated as § 251(b)(5) reciprocal compensation traffic after <u>any</u> modification to the *ISP Remand Order.* For example, if the D.C. Circuit were to disagree with a single, discrete aspect of the Order, it could remand that portion of the Order to the Commission without upsetting the balance of the interim compensation system put in place. Under the AT&T or WorldCom proposed language, however, that partial remand would trigger contract language

[5] WorldCom proposes a similar retroactivity clause, triggered by an unrestricted right to void contract terms after "any legislative, regulatory, or judicial action, rule, or regulation modifies, reverses, vacates, or remands the ISP Remand Order, in whole or in part." WorldCom's proposed contract § x.6.

that converted all ISP-bound traffic to § 251(b)(5) traffic, retroactive to the effective dates of the agreements.[6]

While the CLECs may argue that such an absurd result is not their intent, that (among other things) is precisely what their proposed language would permit. Any change of law regarding this issue should be handled as the Parties handle all other changes of law - through the general Change in Law provisions.

As the above discussion makes evident, the CLECs' purported "implementation" language offered in Issue I-5 is a thinly-veiled attempt to rewrite those parts of the Commission's Order with which the Petitioners are dissatisfied. While Verizon has offered and remains willing to address, on a limited basis, contractual provisions that fairly and accurately describe implementation of the *ISP Remand Order* (*See generally* Tr. 1869-70) the Commission must reject the CLECs' attempts to revise applicable law.

C. VERIZON VA'S CONTRACT PROPOSALS

1. *See* Verizon VA proposed WorldCom contract, Local Interconnection Attachment, §§ 6 and 7; Part A, § 4, and related definitions.
2. *See* Verizon VA proposed AT&T contract, §§ 5.6, 5.7, 27, and related definitions.
3. *See* Verizon VA proposed Cox contract, §§ 5.6, 5.7, 7.1, 27, and related definitions.

[6] Concurring in the FCC's interpretation of the § 251(g) carve out for information access, Verizon does not agree that ISP-bound traffic is or was ever subject to § 251(b)(5) reciprocal compensation obligations. The language AT&T and WorldCom propose here, however, would make all ISP-bound traffic subject to reciprocal compensation, *ab initio*, even if a reviewing court upheld the FCC's statutory finding but prescribed any other modification in the *ISP Remand Order*.

Issue I-6 **Reciprocal Compensation**

WorldCom: Is the jurisdiction of a call determined by the NPA-NXXs of the calling and called numbers?

Cox: VZ-VA may not impose infeasible methods for determining toll versus local traffic.[7]

A. OVERVIEW

This issue represents a blatant attempt by the CLECs to manipulate the rating and routing technical characteristics of the Verizon network into a profit-making windfall. This scheme involves disguising what the CLECs concede is interexchange telecommunications traffic so that it appears to be local exchange traffic. Virtual Foreign Exchange ("VFX") traffic deprives Verizon VA of access charges for this interexchange traffic and inappropriately assesses reciprocal compensation.

B. DISCUSSION

The VFX scheme involves a CLEC obtaining telephone numbers that correlate to one local rate center – often one in which they have no customers or facilities – and assigning those telephone numbers to customers located in distant rate centers. To follow the example used throughout Verizon VA's testimony, a CLEC might assign a Staunton telephone number to a customer physically located in Roanoke. When a Verizon VA customer in Staunton calls that VFX telephone number, it appears -- to the Verizon VA end office switch and the Verizon VA end user -- to be a local call. In fact, however, it is an interexchange call originating in the Staunton Local Calling Area and terminating in the Roanoke Local Calling Area. Under Verizon VA's Long Distance Services Tariff, S.C.C. -Va.-No. 209 (effective October 20, 2000), Verizon

[7] AT&T's Petition for Arbitration did not identify Issue I-6 as an issue in which it joined. AT&T did, however, offer direct and rebuttal testimony on this issue.

VA should collect toll charges, if it handled the call, or originating access charges, if another carrier handled the call.

Because the Verizon VA end office relies on the NPA-NXX assigned to the calling and called parties to rate the call, the CLECs propose that Verizon VA: a) forfeit the interexchange toll or access that it is due under the tariffs and b) pay the CLECs reciprocal compensation for terminating the call.[8] The CLECs do not, and cannot, contest the fact that these calls originate in one Local Calling Area and terminate in another. Tr. 1720-25. Nonetheless, because the end office switch cannot distinguish between these calls and true "local" calls, the CLECs urge the Commission to declare them immune from access charges and subject to reciprocal compensation. In other words, the CLECs suggest that, because they have developed a number assignment scheme that successfully fools the end office switch, the Commission should reward them with a windfall.

1. The Jurisdiction Of A Call Is Based On The End Points Of The Communication.

Whatever the technological characteristics of an end office switch may be, the Commission has held definitively that the jurisdiction of a call is based on the end points of the communication. See *ISP Remand Order* ¶ 14 ("the jurisdictional nature of ISP-bound traffic should be determined, consistent with Commission precedent, by the end points of the communication") and ¶ 25 ("the Commission 'has historically been justified in relying on' end-to-end analysis for determining" the jurisdiction of a call)(*quoting Bell Atlantic*, 206 F.3d at 5).

[8] It is Verizon VA's belief that this same characteristic (*i.e.*, that the switch rates the call based on the originating and terminating NPA NXX) is present in virtually all other LEC end office switches. Thus, this is not just a Verizon concern, it is an industry concern.

Thus, a call that originates in one Local Calling Area and terminates in another is a toll call, regardless of the telephone numbers assigned to the calling and called parties.

Jurisdictionally, there is no difference between VFX calls and toll calls between the very same parties. Using the example above, if a Verizon VA customer in Staunton were to call a CLEC customer in Roanoke whose telephone number had been assigned from the Roanoke NPA-NXX, the call would be an intraLATA toll call. Tr. 1713-14. If the called party in Roanoke were a CLEC VFX customer, with an NPA-NXX assigned from the Staunton Rate Center, the only thing that changes are the numbers dialed by the calling party. Tr. 1720. The call still originates in the Staunton Local Calling Area, traverses exactly the same routing as the toll call, and terminates in the Roanoke Local Calling Area. Under Verizon VA's Long Distance Services Tariff, this is an intraLATA toll call, no matter what telephone number the CLEC chooses to assign to its customer. *See ISP Remand Order*, p. 18, fn. 66 ("we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations"); *see also PA (Sprint/Verizon) Arbitration Order* at 49 ("it was the intent of Congress and the FCC that the pre-existing interstate and intrastate access charge regimes not be disrupted at this time."). The call is certainly <u>not</u> a "local" call subject to reciprocal compensation.

2. Verizon VA's Own FX Service Is Not A Local Service.

Contrary to the CLECs' contentions, Verizon VA's FX service is not a local service. Verizon VA offers FX service as a substitute for toll service for customers physically located outside of the exchange from which they want service. In order to avoid paying toll charges on the interexchange calls between the subscribing FX customer and a party in the foreign exchange, a dedicated facility is provisioned between the FX customer's location and the exchange switch from which it obtains FX service. The FX customer pays for this dedicated transport facility and foreign exchange switch costs as a substitute for paying usage-based toll charges, which would otherwise apply to these long distance calls. Tr. 1889-90.

Verizon VA recovers its switching and transport costs from its FX customer through FX charges, in lieu of usage-based toll charges. Verizon VA loses toll revenue but recovers its overall costs, along with a reasonable profit. Thus, the physical locations of the FX customer and the parties served by the foreign exchange switch are used to define this as toll service. The FX service option is an alternative pricing structure for toll service. It is not, as the CLECs suggest, local service.

3. There Are Viable Methods For Excluding VFX Traffic From § 251(b)(5) Reciprocal Compensation Traffic.

In its *ISP Remand Order*, the Commission established a precedent for excluding traffic from the reciprocal compensation obligations of § 251(b)(5), even though -- to the end user and the end office switch alike -- the traffic appears to be local. As with VFX traffic, an end office switch cannot ascertain the physical location of the terminating point of an ISP-bound call. *See ISP Remand Order* ¶ 59 ("ISPs, in most cases, provide services that permit the dial-up Internet user to communicate directly with some distant site or party (other than the ISP) that the caller has specified."). As a result, the switch routes and rates the call based on the NPA-NXX assigned to the ISP.

In spite of the fact that ISP-bound calls appear local to both the end office switch and the end user, the Commission held that such traffic is not eligible for reciprocal compensation, because § 251(g) excludes it from the reach of § 251(b)(5). *ISP Remand Order* ¶ 34. The Commission should treat VFX traffic in precisely the same manner because, as explained above, it is toll traffic subject to state access tariffs. *ISP Remand Order*, p. 18, fn. 66 ("we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations.").

As with ISP-bound traffic, the fact that the Verizon VA end office switch cannot identify VFX traffic on a call-by-call basis is no reason to treat it as traffic subject to § 251(b)(5). The boundaries of § 251(b)(5) exist as a matter of law and, as quoted above, the Commission has held that access traffic lies beyond those boundaries. *Id.* Since traffic that originates in one Local Calling Area and terminates in another is interexchange (toll) traffic, the Parties and/or the Commission must fashion a method to exclude VFX traffic from § 251(b)(5) reciprocal compensation traffic.

Verizon VA has proposed a method for doing so here. It requires the Parties to conduct a traffic study or create a factor to identify what percentage of apparent local traffic is VFX traffic. Then, if the CLECs will accept the Verizon VA VGRIP proposal, the Parties can exchange that VFX traffic on a bill-and-keep basis.[9] Tr. 1813, 1892. If the CLECs are unwilling to accept VGRIP, the Parties can exchange VFX traffic in accordance with the terms of the governing access tariff.

4. Several States Have Recognized That VFX Traffic Should Not Be Equated With § 251(b)(5) Reciprocal Compensation Traffic.

Several state commissions have addressed this issue and have consistently recognized the inequities involved in paying reciprocal compensation for VFX (also known as "Virtual NXX") traffic.[10]

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[9] Verizon has successfully negotiated such an arrangement with at least one other carrier.

[10] Indeed, this number assignment scheme can prove quite lucrative to the CLECs. It allows the CLEC to create the equivalent of an inbound 800 service, while requiring Verizon VA to provide the associate transport to a distant IP, typically located at or near the VFX customer location.

In a proceeding in Maine involving Brooks Fiber/WorldCom's use of 54 of the 55 codes assigned to it as virtual NXXs, the Public Utilities Commission ("PUC") ruled that calls to virtual NXXs are not local but, rather, are interexchange. The Maine PUC found that Brooks had no customers and no facilities (*i.e.*, loops) to serve customers outside of the Portland, Maine exchange, in which its switch and its ISP customers were located. It found that the only customers located in the 54 other exchanges were actually Verizon's customers calling numbers assigned to Brooks' ISPs. As a result, it ordered Brooks to return all of its codes except the one assigned to the Portland exchange. *ME (Brooks/Verizon) Arbitration Order.*[11]

The Connecticut Department of Public Utility Control ("DPUC") came to the same conclusion in a similar virtual FX case. In that case, the DPUC stated:

> All CLECs have been afforded the opportunity to establish their own local calling areas (LCAs) in Connecticut. Nevertheless, most if not all CLECs have not taken advantage of that option and instead, have chosen to mirror the Telco's LCAs In the opinion of the Department, these CLECs have made a decision to mirror the Telco's LCAs and offer their subscribers large local calling areas via FX service. The Department takes no issue with the carrier's use of FX service in this manner. However, the Department finds the carriers' requests for compensation in these cases disingenuous at best in light of the FCC and Department rulings (including defining their own local calling areas) and their ability to deploy facilities to make these calls truly local and eligible for mutual compensation. The purpose of mutual compensation is to compensate the carrier for the cost of terminating a local call and since these calls are not local, they will not be eligible for mutual compensation. Therefore, the Department will require in those cases where a CLEC offering FX service which chooses to mirror the Telco's LCA, that such FX service calls not be eligible for compensation. Rather, this interexchange traffic will be subject to the payment of originating switched access charges to the ILEC, in this case the Telco.

[11] As the Maine PUC found, the unrestricted assignment of VFX numbers can contribute quickly to the exhaustion of available NXX's for customers who have a physical presence in the Local Calling Area.

CT Arbitration Order at 22. In fact, the DPUC ordered CLECs to provide all data necessary for the calculation of a true-up. The true-up will not only refund the reciprocal compensation paid on virtual FX arrangements but will also allow the Telco to bill originating access charges.

In a similar ruling, the Public Service Commission ("PSC") of Missouri decided that calls originated by Southwestern Bell Telephone Company's ("SBC") customers to AT&T Communications of the Southwest, Inc.'s virtual FX customers should be considered long distance and, therefore, not subject to reciprocal compensation. AT&T had asked the PSC to categorize such traffic as local. *MO (AT&T/SBC) Arbitration Order*.

In the Texas generic SBC arbitration, the Texas PUC ruled that reciprocal compensation only applies to traffic within an originating customer's local calling area. *Texas Recip. Comp. Order*.

Finally, the Georgia PSC recently addressed this very question in a generic proceeding and found, "that reciprocal compensation is not due for Virtual FX traffic." *Georgia Arbitration Order* at 11. In so holding, the Georgia PSC concluded that the physical location of the callers, not the telephone numbers assigned them, determines whether reciprocal compensation is due. *Id.* at 10-11. Since the traffic at issue did not originate and terminate in the same local calling area, the Georgia PSC determined it to be access traffic, not traffic eligible for reciprocal compensation. *Id.*

For all of the foregoing reasons, the Commission should reject the CLECs' VFX proposals. Consistent with Commission and state precedent, the location of the callers, not the telephone numbers assigned, must determine whether a call is interexchange traffic or reciprocal compensation traffic.

C. VERIZON VA'S CONTRACT PROPOSALS

1. *See* Verizon VA proposed WorldCom contract, Local Interconnection Attachment, § 7.2 and related definitions.
2. *See* Verizon VA proposed AT&T contract, § 5.7.3 and related definitions.
3. *See* Verizon VA proposed Cox contract, § 5.7.1 and related definitions.

<u>Issue III-5</u> Tandem Rate

AT&T: Where the geographic coverage of an AT&T switch is comparable to that of a Verizon tandem, should AT&T and Verizon receive comparable reciprocal compensation for terminating the other parties' traffic?

WorldCom: Should the Interconnection Agreement include terms specifying that rates for transport and termination of Local Traffic must be symmetrical; specifying the transport and termination rates to be applied, including rates for tandem switching, transport to an end office, and end office switching; and specifying that where WorldCom's switch serves a geographic area comparable to the area served by Verizon's tandem switch, WorldCom shall charge for tandem switching?

A. OVERVIEW

This issue involves whether the CLECs are entitled to compensation at the tandem rate for traffic routed through their end-office switches. The Commission has ruled that they are not, unless the CLEC shows that its switch serves an area geographically comparable to the area served by the ILEC tandem switch. *Intercarrier Compensation NPRM*, ¶ 105 Neither AT&T nor WorldCom have made such a showing.[12]

B. DISCUSSION

As with Issue I-5, in this issue AT&T and WorldCom hope to rewrite applicable law in order to maximize their own reciprocal compensation revenue. Nonetheless, they have failed to meet the burden placed upon them by the Commission and, as a result, they are not entitled to reciprocal compensation at the higher tandem rate.

[12] This issue is moot for any CLEC that chooses Verizon VA's Rate Plan B. Under Rate Plan B, Verizon VA and the CLEC exchange Reciprocal Compensation Traffic and Measured Internet Traffic at symmetrical rates equal to the rate caps set by the Commission in the *ISP Remand Order*. *See ISP Remand Order* ¶ 89.

1. The Geographic Comparability Test Requires The CLEC To Demonstrate That Its End Office Switches Actually Serve A Geographic Area Comparable To That Served By The ILEC's Tandem.

In the *Local Competition Order*, the Commission concluded that, "it is reasonable to adopt the incumbent LEC's transport and termination prices as a presumptive proxy for other telecommunications carriers' additional costs of transport and termination." *Local Competition Order* ¶ 1085. The Commission further found that, since "additional costs" would likely be greater when tandem switching is involved, it would be appropriate to create separate rates for tandem and end office switching. *Id.* at ¶ 1090. Finally, acknowledging that new technologies might perform functions similar to those performed by an ILEC tandem, the Commission ruled that: "Where the interconnecting carrier's switch ***serves*** a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Id.* (emphasis added); *see* Rule 51.711(a).

The Commission recently clarified this rule, ending the controversy over the "functional equivalency" language of ¶ 1091 of the *Local Competition Order*. The Commission explained:

> In addition, section 51.711(a)(3) of the Commission's rules requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination. Although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency [¶1090], section 51.711(3) is clear in requiring only a geographic area test. Therefore we confirm that a carrier ***demonstrating that its switch serves*** "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.

Intercarrier Compensation NPRM, ¶ 105 (emphasis added). A number of state commissions have interpreted this rule as requiring a CLEC to demonstrate that its switches actually serve a comparable geographic area.

The Texas PUC addressed this issue and concluded that for a CLEC that does not have a "hierarchical, two-tier switching system" (*i.e.*, end-office to tandem to end-office) "to receive reciprocal compensation for performing tandem functions, the CLEC must demonstrate that it is ***actually serving*** the ILEC tandem area using tandem-like functionality, instead of just demonstrating the ***capability to serve*** the comparable geographic area." *Texas Recip. Comp. Order* at 28-29 (emphasis added).

In the *Pacific Bell Opinion*, the California PUC held that AT&T was not entitled to receive tandem switching and transport, in addition to end office switching, for terminating Pacific's customers under reciprocal compensation arrangements, because AT&T failed to carry its burden that its switch currently covered a comparable area. *See Id.* at 21-22. The California PUC found that the "ability to serve an area or plans for future customers does not satisfy this requirement." *Id.* at 22; *see also MCI Telecommunications Corp. v. Michigan Bell Telephone Co.*, 79 F. Supp. 2d 768, 790-92 (E.D. Mich. 1999) (the "rule focuses on the area currently being served by the competing carrier, not the area the competing carrier may in the future serve."); *see also FL (AT&T and BellSouth) Arbitration Order, infra.*

Thus, with respect to each switch for which Petitioners seek tandem rates, Petitioners bear the burden of proof to demonstrate actual geographic comparability. That is, the Commission should require the CLECs to prove that they merit tandem switched rates because their switches actually serve a geographically dispersed customer base.

2. Neither AT&T Nor WorldCom Has Demonstrated That Their End Office Switches Actually Serve An Area Geographically Comparable To The Area Served By Verizon VA's Tandem Switches.

As explained above, the Commission's geographic comparability test requires the CLEC to "demonstrate" that its switch actually "serves" an area comparable to the ILEC tandem. AT&T and WorldCom have offered no evidence concerning the geographic scope of service provided by their switches. Tr. 1589-97. Rather, they have merely offered evidence that purports to show that their end office switches are *capable of serving* a geographic area comparable to the Verizon VA tandems. As the Florida Public Service Commission recently held, that is not sufficient to satisfy the burden placed upon them by Rule 51.711(a)(3).

In the recent Florida decision involving AT&T and BellSouth, the Florida PSC addressed the following question: "whether AT&T should be permitted to charge BellSouth the end office and tandem switching rates for reciprocal compensation when AT&T's switch serves a geographic area comparable to that served by BellSouth's tandem switch." *Id.* at 64.

In an effort to show that it should be permitted to charge the higher rates, AT&T "presented maps depicting the coverage scope of AT&T's switches." *Id.* at 79. Noting that Rule 51.711(a)(3) requires the CLEC to show that its "switch 'serves' a comparable geographic area," the Florida PSC opined that: "presumably the FCC expected [the CLEC] to be incurring costs related to serving actual customers in that geographic area. **While AT&T's maps show the geographic areas AT&T is willing to serve, they do not provide enough information to enable us to make a reasonable determination as to whether AT&T's switches do in fact serve customers in those areas.**" *Id.* at 79-80 (emphasis added). As a result, the Florida PSC held that "AT&T is not entitled to the tandem rate for the purposes of reciprocal compensation." *Id.* at 80.

As it did in Florida, AT&T offered no evidence here concerning the geographic areas in which it actually serves customers. Tr. 1596-97. At best, it has shown that its switches may be ***capable of serving*** customers in areas geographically comparable to the areas served by Verizon VA's tandems. It has not, however, "demonstrat[ed] that its switch serves" any such customers. *Intercarrier Compensation NPRM*, ¶ 105. WorldCom has also fallen short of meeting its burden under Rule 51.711(a)(3). As with AT&T, it offered only evidence relating to the capability of its switches. Tr. 1589-97. It offered no evidence demonstrating their actual service to customers.[13]

Because neither AT&T nor WorldCom offered evidence that would satisfy their burden under Rule 51.711(a)(3), the Commission should reject their plea for tandem rates.

3. Verizon VA Has Offered A Compromise Proposal That Promotes Parity And Fair Competition.

In creating the rule regarding symmetrical compensation rates, the Commission intended to minimize the administrative burden on the parties and to enhance opportunities for local competition. *Local Competition Order* at ¶ 1088. Nothing in that Order suggests that the Commission intended to create an opportunity for a CLEC windfall. Rather, if interconnection is such that CLEC traffic is not routed through a tandem-equivalent switch, then the CLEC should not receive the higher tandem-switched rate.

The tandem rate is higher than the end office rate because of the additional switching and transport costs involved. A CLEC can bypass an ILEC tandem rate, because a CLEC may opt to interconnect directly at the end office. If the CLECs demonstrate that their switches serve areas geographically comparable to the areas served by the Verizon tandems, however, Verizon cannot

[13] To the contrary, WorldCom's admission that it neither serves nor markets to residential customers supports the inference that the geographic scope of service provided by their switches is narrower than that covered by the Verizon VA tandems. Tr. 2719, 2735.

take advantage of a lower end office rate by bypassing the tandem and connecting directly to the CLECs' end office switches. This result runs contrary to the Act's design to promote full, fair and facilities-based competition.

To rectify this inequity, Verizon VA offered a compromise proposal in which AT&T would charge Verizon VA the average rate charged by Verizon VA to AT&T for call termination during the previous calendar quarter. For example, if AT&T sends half of its traffic to the Verizon VA tandem and half to Verizon VA end offices, then AT&T would charge Verizon VA at a rate which would equal the sum of 50% of the tandem rate and 50% of the end office rate. This proposal accounts for the differences in Parties' networks and allows both Parties to take advantage of the lower end office rates.[14]

C. VERIZON VA'S CONTRACT PROPOSALS:

1. *See* Verizon VA proposed WorldCom contract, Local Interconnection Attachment, § 7.1.1 and related definitions.
2. *See* Verizon VA proposed AT&T contract, §§ 4.1.3 , 5.7, Exhibit A and related definitions.

[14] The Pennsylvania PUC adopted this proposal for an average rate for termination of Bell Atlantic's traffic at a CLEC switch, where the CLEC employs a single tier interconnection structure. *Application of MFS Intelenet of Pennsylvania, Inc., et al.*, Penn. PUC, Docket Nos. A-310203F0002, A-310213F0002, A-310236F0002 and A-310258F0002, 1997 Pa. PUC LEXIS 50 (April 10, 1997).

<u>Issue IV-35</u> Reciprocal Compensation

WorldCom: Should the ICA contain a provision that states that reciprocal compensation for the exchange of Local Traffic shall be paid?

A. OVERVIEW

Issue IV-35 relates closely to Issue I-5. As explained above, in the *ISP Remand Order,* the Commission made it clear that the eligibility for reciprocal compensation will no longer turn on whether or not traffic is "local." The Commission should reject language proposed by WorldCom that conflicts with the change in the Commission's methodology.

B. DISCUSSION

In the *ISP Remand Order,* the Commission revised its rules regarding traffic eligible for reciprocal compensation under § 251(b)(5). Rather than determine whether traffic is "local" or not, traffic must meet two requirements to be eligible for reciprocal compensation. First, traffic must be telecommunications traffic that is not excepted from the scope of the reciprocal compensation provision by section 251(g). Second, traffic must originate on the network of one carrier and terminate on the network of another, per 47 CFR § 51.701(e).

In spite of the Commission's admonitions, WorldCom continues to propose a definition of "local traffic" as the lynchpin of reciprocal compensation eligibility. *See* WorldCom's proposed contract § 4.2. Verizon VA, on the other hand, has proposed language consistent with the Commission's approach that excludes § 251(g) traffic from the traffic subject to the § 251(b)(5) reciprocal compensation obligations. *See* Verizon's proposed WorldCom contract § 7.3.

As did the Pennsylvania PUC and the Maryland PSC, the Commission should adopt Verizon VA's definition of "Reciprocal Compensation Traffic," rather than WorldCom's proposal that inappropriately relies on a definition of "Local Traffic." *PA (Sprint/Verizon) Arbitration Order* at 47; *MD (Sprint/Verizon) Arbitration Order* at 23-24.

C. VERIZON VA'S CONTRACT PROPOSALS

See Verizon VA proposed WorldCom contract, Local Interconnection Attachment, § 7 and related definitions.

Issue V-1 **Competitive Tandem Service**

Issue V-8 **Competitive Tandem Service**

AT&T: Issue V-1 - Should Verizon be permitted to place restrictions on UNEs so as to preclude AT&T from providing competitive tandem services?

Issue V-8 - Should the contract terms relating to the Parties' joint provision of terminating meet point traffic to an IXC customer be reciprocal, regardless of which Party provides the tandem switching function? Put another way, should the contract terms make clear that AT&T and Verizon are peer local exchange carriers and should not bill one another for meet point traffic?

A. OVERVIEW

In Issues V-1 and V-8, AT&T wants to provide competitive tandem service to an IXC, whereby an IXC would deliver Feature Group D access traffic to a Verizon VA tandem or end office via an AT&T tandem. In this scenario, the IXC would interconnect with AT&T as a competitive tandem service provider and AT&T would interconnect with Verizon VA in order to deliver access traffic to Verizon VA's end users. The arrangement sought by AT&T involves neither exchange service nor exchange access for AT&T end users. Therefore, this arrangement does not belong in the interconnection agreement for local exchange services between the Parties. Moreover, Verizon's FCC No. 1 Switched Access Tariff already provides for this type of an arrangement. *See* Tariff FCC No. 1, Section 6.4.1(AO). Unsatisfied with the manner in which all other carriers obtain this service, AT&T hopes to secure this access service at TELRIC rates. AT&T's position stands in direct conflict with the Telecommunications Act, several state decisions and the Commission's access charge regulations.

B. DISCUSSION

The situation at issue arises when an IXC chooses to access Verizon VA's network through AT&T acting as a competitive access provider ("CAP"), rather than connecting directly with Verizon VA. In this scenario, Verizon VA has the ability to provide access service directly to the IXC for traffic to and from Verizon VA's end users, but the IXC has chosen to use AT&T acting as a CAP instead.

As mentioned above, this is a perfectly acceptable arrangement that is facilitated by Verizon's offering of Switched Access Signaling Service, as provided for in the federal access tariffs. Under this arrangement, Verizon VA would assess the appropriate access charges to the CAP, rather than the IXC, for the access services used in interconnecting the CAP's network with Verizon VA's network. Thus, the CAP pays the same access rates as the IXC would pay, if the IXC connected directly with Verizon VA.

With its Competitive Tandem Services proposals, AT&T seeks to circumvent the plain meaning of § 251(g) of the Act, this Commission's recent *ISP Remand Order*, and Verizon's Commission-approved access tariff. Moreover, AT&T's proposals contradict the numerous state commissions that have ruled against AT&T on this issue, as well as the Eighth Circuit's decision in *CompTel v. Federal Communications Com'n.*, 117 F.3d 1068, 1072 (8th Cir. 1997), *aff'd in part, rev'd in part, AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999). Mr. D'Amico summarized these issues simply and succinctly when he stated:

> this is a service that's offered in the [Verizon] access tariff, and therefore it should not be included in the agreement. And because it's in the access tariff, appropriate access rates should apply.

Tr. at 2686.

1. AT&T's Competitive Tandem Service Is An Access Service For Interexchange Carriers.

AT&T readily admits that it plans to market its Competitive Tandem Service to interexchange carriers ("IXCs"). AT&T Ex. 3 at 67. The fact of the matter is that AT&T may do so right now. Pursuant to Verizon's federal access tariff, AT&T may purchase from Verizon

VA its Switched Access Signaling Service ("SASS") to offer its Competitive Tandem Service to IXCs. Verizon Ex. 4 at 43.

AT&T is free to interconnect with Verizon to provide exchange access services. Verizon VA does not wish to prohibit AT&T from doing so. Section 251(g) of the Act, however, provides that:

> On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers . . . with the same equal access and nondiscriminatory interconnection restrictions and obligations (**including the receipt of compensation**) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order or policy of the Commission, until such restrictions and obligations are explicitly superceded by regulations prescribed by the Commission after such date of enactment . . . .

47 U.S.C. § 251(g) (emphasis added).

AT&T contends that because it has the right under § 251(c)(2) of the Act to obtain interconnection to provide an exchange access service, it may include its Competitive Tandem Service in the parties' interconnection agreement and lease facilities from Verizon at UNE rates to provide this service. AT&T's position not only ignores § 251(g) of the Act, it contradicts the Eighth Circuit's *CompTel* decision.

In *CompTel*, the Eighth Circuit relied on § 251(g) in rejecting CompTel's argument that exchange access services should be cost-based. 117 F.3d at 1072. The court held that "[t]he Act plainly ***preserves*** certain rate regimes already in place." *Id.* (emphasis added). Verizon's SASS and switched access service was in place prior to passage of the Act through Verizon's federal tariff and remains available to AT&T today. As *CompTel* and § 251(g) make clear, AT&T is not entitled to lease facilities from Verizon for access traffic at cost-based rates.

AT&T's argument also overlooks this Commission's interpretation of § 251(g) in the *ISP Remand Order*. In the *ISP Remand Order*, the Commission held that "Congress preserved the pre-Act regulatory treatment of ***all*** access services enumerated under section 251(g)." *ISP Remand Order* ¶ 39 (emphasis added). One of the access services enumerated under § 251(g) is "exchange access" and "exchange services for such access to interexchange carriers." 47 U.S.C. § 251(g). AT&T wishes to provide exchange access services to IXCs. AT&T Ex. at 67. "These services thus remain subject to Commission jurisdiction under section 201 (or, to the extent they are *intra*state service, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies or reciprocal compensation." *ISP Remand Order* ¶ 39 (emphasis in original).

Finally, several state commissions have refused to include AT&T's competitive tandem service in its interconnection agreement with ILECs. Most recently, the New York PSC held that:

> there are no legal or regulatory restrictions precluding AT&T from providing competitive access tandem service to other carriers, even if technical restrictions limit its offering to terminating traffic for the time being. However, this proceeding and the new agreement concerns AT&T's local service interconnections with Verizon and not AT&T's competitive arrangements with other carriers. Accordingly, AT&T's access service language need not be included in the agreement.

NY (AT&T/Verizon) Arbitration Order at 39-40. Likewise, the Indiana Public Service Commission ("Indiana Commission") rejected AT&T's Competitive Tandem Service proposal, holding that the traffic at issue "is not local, and thus is appropriately dealt with in federal and state access tariffs, not interconnection agreements." *IN (AT&T/Ameritech) Arbitration Order* at 30. This Commission should also reject AT&T's contract language for Competitive Tandem Service in AT&T's proposed Schedule Four, Part B § 6.

The services AT&T requests from Verizon VA in order to offer its Competitive Tandem Service are available to AT&T through Verizon VA's access tariffs. Whether AT&T plans to provide this supposed service to itself or another IXC, the type of service remains the same: access service. If AT&T were to provide this service to itself under the arrangement it seeks, all access charges to AT&T would be eliminated and replaced with TELRIC-based rates, as stated in AT&T's proposed Schedule 4, Part B § 6.1:

> Verizon will provide to AT&T **UNE local switching**, tandem switching and transport of Feature Group D calls from end-users who have chosen an IXC that is connected to the AT&T's tandem switch. (emphasis added)

and in Mr. Talbott's testimony:

> As we stated in our testimony on Issue V.1, it is AT&T's position that the rates for such **switching and any other facilities** used should be **UNE rates** rather than exchange access rates. (emphasis added)

AT&T Ex. 3 at 116. This result would be wholly inconsistent with the Act, and the Commission's adoption of a market-based, versus a cost-based, approach to establishing access charges. The fact that AT&T supposedly plans to offer the tandem services to other IXCs does not change this analysis. The services AT&T plans to offer remain interexchange services subject to access charges.

2. AT&T Incorrectly States That There Are No Technical Issues Associated With This Service.

In its pre-filed rebuttal testimony, AT&T represented that there is no technical problem associated with its proposal because, "there will not be two tandems involved with originating calls. The calls will go directly from Verizon's end office switch to AT&T's tandem switch and from there to the subscribing IXC switch." AT&T Ex. 8 at 48.

AT&T's proposed contract language, however, contradicts these statements. In its Schedule Four, Part B, § 6.5, AT&T proposes that:

> Upon request from AT&T, Verizon shall provide Carrier Identification Parameter option with competitive-tandem trunk groups ordered by AT&T, so that the primary customer's carrier identification code (CIC) or the CIC designated by the origination of the call will be sent to AT&T in the initial address message of the common channel signaling protocol.

This provision does not limit the calls between a Verizon End Office and an AT&T switch. Moreover, in Schedule Four, Part B, § 6.1, AT&T proposes that:

> Verizon will provide to AT&T UNE local switching, **tandem switching** and transport of Feature Group D calls **from end-users** who have chosen an IXC that is connected to the AT&T's tandem switch. (emphasis added)

Despite AT&T's representations to the contrary, its contract language specifically envisions that this type of traffic will be routed through Verizon's tandem. AT&T offered no language that would support its pre-filed rebuttal testimony or contradict the technical concerns expressed by Verizon in its pre-filed direct testimony. Verizon Ex. 4 at 44.

3. AT&T's Unnecessarily Proposes Revised Meet Point Billing Language Under This Issue.

In revising its proposed contract language for Competitive Tandem Service, AT&T has inappropriately offered new language for Meet Point Billing. *See* AT&T's proposed Schedule Four, Part B, § 4. As Verizon noted in testimony, AT&T originally mischaracterized Competitive Tandem Service as part of Meet Point Billing. Verizon Ex. 5 at 15-19. In his direct testimony, AT&T witness Talbott conceded that this was inappropriate. AT&T Ex. 3 at 114. In conjunction with Mr. Talbott's testimony, AT&T proposed separate contract language for Competitive Tandem Service, as discussed above. Nonetheless, AT&T has left in its proposed contract its Schedule Four, Part B, § 4, which addresses Meet Point Billing. This language is unnecessary, as the Parties have reached agreement on all of the contract language relevant to

Meet Point Billing. *See* Verizon's proposed contract with AT&T § 6.3. Thus, AT&T's proposed Schedule Four, Part B, § 4 is both redundant and inappropriate. Accordingly, the Commission should reject that language in its entirety.

In summary, the Commission should decline to adopt AT&T's Competitive Tandem Service proposal in the Parties' interconnection agreement. It is a blatant attempt by AT&T to circumvent applicable law and the Commission's current access regime. In addition, as a general policy matter, AT&T's proposal does nothing to increase local market competition, because the AT&T customer is an IXC. The Commission should reject AT&T's proposed Schedule Four, Part B, § 6 in its entirety.

C. VERIZON VA'S CONTRACT PROPOSALS

See Verizon VA proposed AT&T contract, §§ 5.7.1 and 6 and related definitions.